

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 3 OF 2020

In the matter of billing

Raptakos, Brett & Company Limited Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Satara (MSEDCL)..... Respondent

Appearances

For Appellant : Dinesh Mishra, Sr. Vice President


For Respondent : 1. U. M. Kulkarni, Supdt. Engineer
2. N. S. Shikalgar, Jr. Law Officer.
3. S. C. Bhosle, Dy. Manager, F & A
4. S. S. Kulkarni, LDC

Coram: Deepak Lad

Date of Order: - 9th March 2020

ORDER

This Representation is filed on 27th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 8th November 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Baramati Zone (the Forum).



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2. The Forum by its order dated 08.11.2019 has dismissed the grievance application in Case No.16 of 2019.

3. Not satisfied with the order of the Forum, the Appellant has filed this representation stating in brief as under: -

- (i) DHM Healthcare Pvt. Ltd. (initial name) (DHM) is 11 KV HT Industrial Consumer (No. 197969026650) from 08.03.2017 having contract demand of 478 KVA and connected load of 450 KW at C-2, Taswade, MIDC, Karad, District Satara.
- (ii) The building premises received completion certificate from MIDC Authority on 26.02.2013. The Appellant (Raptakos, Brett & Company Limited), a company in manufacturing pharmaceutical products purchased a fully constructed factory of DHM in the month June 2016 and connection was taken in the name of DHM on 08.03.2017.
- (iii) The Appellant has applied for change of name on 25.05.2017 and accordingly the change of name was approved and effected immediately.
- (iv) The site was duly inspected by the Respondent, Testing Team and verified the manufacturing facility / factory operations and ensured that there were no construction activities pending.
- (v) Almost all pharmaceutical companies require approval of factory and products before sales, from Food & Drugs Authorities (FDA) and other related Government Departments. After receiving HT supply the Appellant started trial production on its various pharmaceutical products in the factory.
- (vi) The Appellant has applied for various licenses for commencing the production. Accordingly, they have received a license from FDA and various other Government Authorities. The Appellant as per the norms of the pharmaceutical manufacturer initiated a trial production from 08.03.2017. Since then ongoing various pharmaceutical products were manufactured in the factory and various product testing/analyzing activities were also under process simultaneously. Based on the compliances of the Appellant and as required by the Licensing


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authorities the Appellant was granted individual product licenses to manufacture from 08.03.2017 to 31.10.2017. The consent from Maharashtra Pollution Control Board (MPCB) dated 23.02.2017 was also obtained by the Appellant before released connection of electricity received by Appellant.

- (vii) The details of monthly consumptions in KWH units and maximum demands in KVA of the Appellant are tabulated as below:

Table 1


Months	Units (KWH)	Maximum Demand (KVA)
October – 2017	24101	310
November – 2017	28985	293
December – 2017	32874	237

- (viii) The Appellant invites the attention to the fact that its power usage is ranging up to 310 KVA maximum.
- (ix) On 02.10. 2017, on account of public holiday for Gandhi Jayanti, the factory of the Appellant was closed. Allegedly, the Respondent took inspection of the factory when the same was closed as aforesaid. The inspection report was prepared and copy of the same was not given till September 2018 until asked specifically by the Appellant. Unilaterally, the Respondent changed the description of applicable meter tariff rates from Industrial to Commercial nearly 127 days after the site inspection was allegedly done.
- (x) The Appellant states that from January 2018, the Appellant noticed the difference in tariff. Thereafter, the Appellant has inquired orally at the Respondent local office at Karad but could not get satisfactory response as regards sudden increase in the electricity bills. On inquiry at Circle Office, Satara, the Appellant was informed that tariff is changed with rates applicable to Commercial tariff category as against applicable Industrial tariff based on the inspection report dated 02.10.2017. At the request of the Appellant eventually the copy of the report was provided only in September 2018. Hence, the Appellant noted the contents of the report only after 11 months of the alleged Respondent's Site Inspection Report.


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- (xi) After seeing the discrepancy in the Respondent's inspection report, the Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 01.10.2018. The IGRC by its order dated 21.06.2019 rejected the application for refund of excess amount charges on account of wrongful conversation of meter to industrial to commercial.
- (xii) Being aggrieved by the said order, the Appellant approached the Forum on 23.08.2019. The Forum by its order dated 08.11.2019 has dismissed the grievance application.
- (xiii) The grounds of appeal are as below:-
1. The impugned order is illegal, bad in law and deserves to be set aside.
 2. The Forum completely ignored that the alleged inspection was carried out on 02.10.2017 which was National Public holiday being a Pharmaceutical Factory as per the Industrial Employment (Standing Orders) Act, 1946, the factory of the Appellant was closed. Under the above circumstances, at the time of Respondent's site inspection at the Appellant's factory no manufacturing activity was found to be carried out nor any authorized personnel was available at the Appellant's factory to attend to Respondent's inspection.
 3. The Forum, on one hand, admits the evidence regarding the factory having been purchased on 14.06.2016 from DHM, the factory manufacture License of the Appellant's factory dated 28.01.2017, the building completion certificate issued by the Maharashtra Industrial Development Corporation in 2013, however, erred in rejecting the application.
 4. The Forum totally ignored the fact of regular consumption of electricity, however erred in emphasizing the consumption was less. The Forum ought to have considered that during the initial stages of the factory only the trial productions are taken for sending the samples for the purpose of submission to various licensing authorities for procurement of product licenses and to ascertain the efficacy of the product shelf life for its duration. The trial production consumes negligible electricity in comparison to actual commercial production.


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5. The report dated 02.10.2017 is a very vague report, it briefly mentioned that the construction activity was going on however, it does not specify the exact and/or general nature of the construction carried out. The report is also vague as it nowhere mentioned that the building was under construction.
6. The Respondent's site engineer completely ignored the fact that the manufacturing operations have been already started by the Appellant and initial batches of the products were produced and were being tested by the quality assurance team of the Appellant.
7. The Appellant has submitted various individual product licenses obtained during the period from 08.03.2017 to 31.10.2017 which is granted to Appellant by FDA only after submission of valid samples/test reports and manufacturing records at the factory. The Appellant submits that procuring of individual licenses is an ongoing activity which is a pre-requisite criteria for any production to start and based on consumer / market demands various improvements in existing products and new products licenses are obtained.
8. The Forum ought to have considered that the Appellant was unaware of the change in tariff until September 2018 by when the inspection report dated 2.10.2017 was provided to Appellant whereby first time the contents of the inspection report was noted by the Appellant. In order to avoid any penalty or any disconnection of the electricity connection, the Appellant has paid the retrospective bill under protest.
9. The Forum ought to have considered that the Appellant was demanded additional supplementary bill for the period March 2017 to December 2017 of Rs. 6,28,654/- by the Respondent vide letter dated 29.12.2018 which was duly paid by the Appellant under protest in order to avoid levy of any penalty or any disconnection of the electricity connection by the Respondent.
10. No proof /evidence of construction activity in the Appellant's premises were produced by the Respondent in any of the above hearings. The Appellant submits that such negative evidence cannot be demanded and admissible. The Appellant states that it has provided evidences (internal as well as


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government nominated agencies licenses) as regards ongoing manufacturing activities.

11. Visit of the Respondent's site engineer was on 02.10.2017 which was a National holiday (Mahatma Gandhi Jayanti) and Appellant's factory was closed on account of paid holiday to all staff/ workers in observance / compliance to holidays to be observed.
12. The report is prepared by Respondent's site engineer which is signed by the Appellant's temporary staff and not by a competent / authorised person of the Appellant's factory which is not as per extant guidelines of MSEB. Appellant states that mere signing on the Respondent's inspection report along with mobile number by any temporary staff of the Appellant cannot be construed to be acceptance of the contents of Respondent's Inspection Report by the Appellant.
13. The Forum ought to have considered that the prima-facie record shows that the Appellant's premises was inspected on 02.10.2017, by the Additional Executive Engineer (Testing Division.), and report prepared is also in the format of details a required for Testing of Meter.
14. The Forum has heavily relied on the Respondent's inspection report dated 02.10.2017 and ought to have considered that the Respondent's Site Engineer was from a Testing Division who is primarily entrusted with a task on periodical basis visits to the factory of the Appellant and check the load test, maximum demand, pilferage, if any, incoming and outgoing cable chambers, CTPT Chambers, phase sequence and voltage meter terminals etc and not installation.
15. The Appellant invite attention of the fact that no construction activity was in progress during visit of Respondent's site engineer.
16. The Forum ignored the fact that Appellant though purchased fully constructed factory on 14.06.2016, did the required alterations / modifications changes/installation of machineries etc during the period 14.06.2016 to 28.02.2017 and since construction of factory was duly completed and as per Appellant for installation of machinery no major


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electricity is required. The Appellant's building completion certificate issued by MIDC on 26.02.2013 to erstwhile owner DHM.

17. The Forum ought to have considered that as the various external Government Agencies have issued licenses to Appellant which is given only after Appellant's factory manufacturing operations are in progress. The said agencies have done their own requisite individual inspections and then only granted the licenses to Appellant. Details of various licenses are as below :

Table 2

Name of The Agency	Nature of Licenses	Effective Date
FDA	Factory Manufacturing Licenses	20.04.2017
MPCB	Consent to Operate – Discharge of Effluents	23.02.2017
FDA	Individual Product Manufacturing Licenses	08.03.2017 to 31.10.2017 (& Ongoing till date)

18. The Appellant submits that during visit of the Respondent's Site Engineer, there were routine machine setup / cleaning / refixation of machines post cleaning were being in progress which is carried out for better performance and for mandatory changeover of products which is also observed and mentioned by the Respondent's site engineer in inspection report, hence Appellant states that to come to a conclusion that no activity was in progress is not correct.
19. The Forum ought to have considered that as per Clause 24.1 of MSEDCL's Condition of Supply, the Assessing Officer needs to personally inspect the premises. The Superintendent Engineer (SE) who is a designated Assessing Officer for the Appellant's factory never visited the premises. Under the circumstances, the Forum ought to have completely ignored the report dated 2.10.2017 being vitiated inspite of that the authority placed heavy reliance on the said report and passed the impugned order only on the basis of the impugned report.


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20. The Forum ought to have considered the Appellant is high tension (HT) consumer of electricity supplied by Respondent. As per condition Nos. 24.1.2 and 24.1.3 of the M.S.E.D.C.Ls conditions of supply, Superintending Engineer / Chief Engineer from Operation and Maintenance of concerned area is / are designated as Assessing Officers for H.T. consumers, in pursuance of the State Government notification No. IEA 2006 / C.R.477 (I) NRG – 3 dated 26th Sept. 2006.
21. The Forum ought to have considered that the prima-facie record shows that the Appellant's premises was inspected on 02.10.2017, by the Additional Executive Engineer (Testing Division.), who is not designated as Assessing Officer as per Condition No. 24.1.3 of MSEDCL's conditions of supply.
22. The Forum completely ignored the ratio laid down by the Supreme Court in Seetaram Rice Mill 2 SCC 108 (2012). In the said case it was held by the Hon'ble Apex Court "the assessment is void and illegal, if it is not personally done by the Assessing Officer". The facts of the present case are identical.
23. Without prejudice to our rights, the Forum also completely ignored the ratio laid down by the Commission in case No. 24 of 2001 and the order of Appellate Tribunal for Electricity (ATE) in Appeal No. 131 of 2013 as well as the orders passed by the Electricity Ombudsman. In the said cases it was held: -

"No retrospective recovery is possible, the arrears on account of merely reclassification of the consumer category considering the nature of activity in the Appellant's unit have to be collected by the Electricity Board from the Appellant from the date of detection of error i.e. 02.10.2017."

The facts of the present case are identical hence, the Forum ought to have considered date of detection of error in category of meter with effect from 02.10.2017 and based on above judgements respondents should have not demanded retrospective recovery from 08.03.2017.


24. The Forum completely ignored the proof of production being carried out by the Appellant in the month of October, 2017 & November 2017 onwards


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which was given by the Appellant to the Forum during hearing on 18.10.2019.

25. The Forum erred in asking for the proof of production retrospective from the date of providing connection to the Appellant ie. 8th March 2017. The Appellant states that there was no proof/evidence produced by the Respondent to show that there was construction activity going on since March, 2017 nor the Respondent has also provided any proof/evidence of construction activity going on the date of inspection ie. 2nd October 2017 therefore to call upon the Appellant to produce any proof/evidence retrospectively is illegal.
 26. The Appellant repeated and reiterated that due to wear and tear (as old constructed building), small repairs and maintenance work was in progress during the visit of respondent's field officer. This fact has been mentioned in Appellant's letter dated 01.10.2018.
 27. The Forum also ignored that the changing the meter from Industrial to Commercial the Authority ought to have acted on the principles of natural justice and ought to have been fair with the Appellant by Respondent taking second immediate inspection by authorized designated assessing officer on any working date of the Appellant's factory as the first alleged inspection dated 2nd October 2017 done by the Respondent was not as per extant guidelines of M.S.E.D.C.L's conditions of supply.
 28. The Appellant, therefore, prays that the Respondent be directed to refund Rs.45,48,148/- for retrospective recovery from March 2017 onwards with interest @ 18% p.a.
4. The Respondent filed its reply by its letter dated 15.01.2020 stating in brief as below:-
- (i) The Appellant is a HT Consumer (No. 197969026650) having Contract Demand of 400 KVA and Sanction Load of 450 KW from 08.03.2017.
 - (ii) The Appellant filed the grievance application on 01.10.2018 in IGRC. The IGRC by its order dated 21.06.2019, has rejected the grievance.



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- (iii) Not satisfied with the order of the IGRC, the Appellant approached the Forum on 23.08.2019. The Forum by its order dated 08.11.2019 has dismissed the grievance application.
- (iv) The Brief Facts and Law points
- A) It is admitted fact that electricity connection is provided to the Appellant for industrial purpose on 08.03.2017 and the Appellant has paid the electricity bills regularly. Previously the electricity connection was released in the name of DHM. The electricity bills were issued in its name till June 2017 and afterward by change of name present Appellant is on record.
- B) The Appellant rely on the building completion certificate given by MIDC on 26.02.2013. It is to note here that said consumer came in focus on 08.03.2017. Therefore, completion certificate is not acceptable because at the time of site visit on 02.10.2017 old structure of DHM was there and presuming that construction of activity of the Appellant was over, electricity connection was released for Industrial purpose.
- C) Appellant submit details of monthly consumption in KWH units and tried to show that requirement of consumptions of construction confirm that the electricity is being used purely for Industrial purpose. The details load units consumed during disputed is as follows.

Table 3


Sr. No.	Month	Consumption (Units)	Bill Amount (Rs.)
1	Mar-17	918	67887/-
2	Apr-17	1270	60268/-
3	May-17	1478	65259/-
4	Jun-17	1495	67374/-
5	Jul-17	1910	67834/-
6	Aug-17	1754	69685/-
7	Sep-17	3713	79823/-
8	Oct-17	24101	273507/-
9	Nov-17	28995	315855/-
10	Dec-17	32874	327551/-


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Ongoing through the consumption pattern of Appellant it appears that before spot inspection consumption of Appellant is less and after that consumer utilized electricity in huge quantum. It clearly shows that prior spot inspection electricity used for construction purpose and after completion of construction Appellant started manufacturing of drugs. Therefore statement made in respect of monthly consumption of units and maximum demand as compared to requirements of consumptions of construction meter confirm that the electricity is being used purely for industrial purpose is not true and denied in toto.

- D) It is not true that on account of public holiday for Gandhi Jayanti the factory of Appellant was closed. It also not true that report prepared by Respondent's site engineer is not as per extant guidelines of MSEDCL.
- E) It is not true that Appellants inquired orally at Respondent office at Karad but could not get satisfactory response as regards sudden increase in their electricity bills. Officers of Respondent satisfied questions raised by Appellant.
- F) It is not true that manufacturing operations have been already started by the Appellant and initial batches of the products were produced and were being tested by the quality assurance team of the Appellant.
- G) It is not admissible that various trial productions are also duly categorized as manufacturing activity.
- H) It is not admissible that 2nd verification ought to have been done by the authorized designated officer of the respondent.
- I) It is not true that Appellant have building completion certification dated 26.2.2013 by MIDC. It is note here that said certificate was issued in the name of DHM, present Appellant had made changes in actual construction and said construction was observed by Testing unit of Respondent during spot inspection dated 02.10.2017.
- J) It is not true that Appellant were purely ignorant of change of the tariff to commercial as well as contents of the site inspection report. It not true that grave defects/errors in the site inspection report dated 02.10.2017.


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- K) It is to note here that Appellant rely on the condition No. 24.1.2 of 24.1.3 of MSEDCL Condition of Supply 2010 but that in this case Section 126 of Electricity Act 2003 (the Act) is not involved, only bill of tariff difference was issued to Appellant hence abovementioned provisions are not applicable to this case.
- L) It is also to note here that ratio laid down by Hon'ble Supreme court of India in Seetaram Rice Mill Case is not applicable to this case. Even Judgment passed by Hon'ble ATE in Appeal No. 131 of 2013 is not applicable to this case. Respondent submits that as per Section 56 (2) of the Act, Respondent is empowered to recover the said supplementary bill.
- M) The facts of the said case are as under.
1. Respondents received direction from Executive Director (Billing) regarding verification of activity code and tariff category of HT consumer. It was also informed to carry out physical inspection so as to assign proper tariff code.
 2. After that premises of Appellant inspected by Testing division on 2.10.2017 and found that "*Construction of factory. No production activity of or manufacturing activity has started. Installation of machinery and fitting is still in progress*". Said spot inspection report was signed by consumer representative and it was very well conducted openly and in presence of some employees of the consumer. Shri. Patil, employee of consumer signed said report in English also write mobile number. It means employee is not an illiterate person and he must have informed in respect of site inspection to his higher officers.
 3. The Respondent has billed the Appellant for Rs.45,48,148/- towards tariff difference from Industrial to Commercial from March 2017 to November 2018 as it was noticed that construction activities were going on at site. Because of construction activity and absence of manufacturing activity, supplementary bill was issued to the Appellant. The Respondent received letter from the Appellant on


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01.10.2018 with a request to change tariff from Commercial to Industrial. In the said letter, the Appellant specifically mentioned that some minor construction work was in progress during the visit of SDO, Karad. Therefore, they have charged electricity as per Commercial tariff which is cumbersome to pay and now it is kindly requested to henceforth charge electricity consumption as per prevailing Industrial tariff.

4. On the basis of said inspection, the Executive Engineer Testing Division, Satara vide letter No. 1547 dated 05.10.2017 analyzed the said case as under.

It is necessary to change the activity of the above consumer and apply appropriate tariff to the consumer w.e.f. date of connection, as activity observed on the above premises is construction of building. Hence it is necessary to apply either HT-II or HT V III (B) whichever is higher to the above consumer.

It is to note here that the said Appellant is charged under HT-II and not under HT V III (B).


5. After that Respondent charged the Appellant under Commercial tariff from Jan 2018 billing. The Appellant regularly paid electricity bills as per commercial tariff till Nov 2018. It is note here that aforesaid Appellant given admission that construction work is in progress hence facts mentioned in spot inspection report are proved.
6. After that Respondent issued letter vide 8559 dated 23.10.2018 to Executive Engineer, Karad for detailed verification of consumer premises as per request of consumer dated 01.10.2018. The Executive Engineer Karad submits report vide letter No. 6629 dated 24.12.2018 and informed that the activity of the Appellant is manufacturing and packing of Pharmaceutical products.
7. Respondent vide letter no. 10297 dated 29.12.2018 issued letter to Appellant and informed the amount of tariff difference Rs.


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6,28,654/- (for the period March 2017 i.e date of connection to Dec 2017).

8. After receipt of said letter, the Appellant has paid Rs. 6,28,654/- on 01.01.2019 under protest and requested to change tariff from commercial to industrial. After that on the basis of spot inspection given by the Executive Engineer Karad tariff of said consumer was changed in Dec 2018 billing.
- N) Respondent respectfully submits that during spot inspection of testing division was observed that Appellant carrying construction and there was no manufacturing activity in premise of Appellant. Said spot inspection report was signed by representative of consumer. Therefore, bill of tariff difference given to Appellant is correct and as per the facts mentioned in its written statement.
- O) The Forum rightly held in para no. 18 of the judgment that inspection report clearly indicates that the activity was construction of factories and there was no production activity or manufacturing activity was not started. The installation of machinery and its fitting is still in progress. All these contents clearly indicate that actual manufacturing activity was not in progress.
- P) The Forum rightly held in para no. 19 of the judgment that building completion certificate is in the name of original owner and is dated 26.02.2013 and on purchase of said factory, some modification and alterations in the construction must be there.
- Q) The Forum rightly held in para no. 19 of the judgment that there is no cogent evidence to show that actual manufacturing activity was in the process. There may be some trial production on various pharmaceutical products to be manufactured in the said factory, but it cannot be said that it was purely manufacturing activity.
- R) The Forum rightly held in para no. 20 of the judgment that no documentary evidence is produced to show the quantity of the production as well as sale of the production made before the date of inspection.


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Finally, Respondent respectfully prays that the appeal filed by the Appellant shall be dismissed with cost.

5. During the hearing on 24.01.2020, the Appellant submitted its written arguments, most of which are already recorded in the representation and taken on record. Rest of the main arguments of the Appellant are as below:-

- A. Essential to mention certain facts before advancing the argument on law point:
- a) Before grant of industrial connection, factory site was inspected by the Respondent team. After completing all requisite formalities as required, a final order for release of a HT (High Tension) supply for Industrial purpose was issued by Respondent to the Appellant and thus specifically Respondent has granted the Appellant industrial meter connection since inception i.e. 08.03.2017.
 - b) After obtaining all mandatory licenses which are granted only if the factory is fully ready for operation, the Appellant started the manufacturing activity since April, 2017.
 - c) The Appellant were regularly taking the production in their factory since April, 2017. As per the statutory requirement of licenses for the pharmaceutical products initially a validation batch of the product is required to be taken which is of a limited quantity, after examining the same the license to manufacture for the specific individual product is given by the FDA. During the period April, 2017 till November, 2017 the Appellant manufactured validation batches of the following products: -

Table 4

Name of product	Batch No.	Manufacturing date
Arbivit – 3 Syrup	17001	April, 2017
	17002	May, 2017
	17003	May, 2017
Neopeptine Drops	17001	August, 2017
	17003	October, 2017
Terapep	17001	October, 2017
Duramont	17001	November, 2017


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Physical strips/bottle of the validation product was handed over to the lower authorities at the time of hearing of the matter.

- d) The actual consumption of the electricity units as admitted by both the parties as under :-

Table 5

Months	Consumption (units)
March, 2017	918
April, 2017	1270
May, 2017	1478
June, 2017	1495
July, 2017	1910
August, 2017	1754
September, 2017	3713
October, 2017	24101
November, 2017	28985
December, 2017	32874

- e) At the request of the Appellant eventually the copy of the report was provided only by e-mail on 13.11.2018. Hence, the Appellant noted the contents of the report only after 13 months of the alleged site inspection report.
- f) The Appellant protested the said change by various letters and internal grievance complaint was filed.
- B. The Forum completely ignored the material evidence of the factory being fully functional from April 2017 till date and on 2.10.2017 only.
- C. Consent to Operate Discharge of Effluents on 23.2.2017.
- D. 32 Licenses for the separate individual product manufacturing in the factory during the disputed period issued by Food and Drugs Authority.
- E. All these documents clearly reveal that during April, 2017 till November, 2018 the factory was fully functional. Despite the same the tariff was changed from Industrial to Commercial without any rhyme or reason.
- F. Inspection report is not properly drawn in accordance with the statute specifically as prescribed under Section 126 of the Act.


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G. Under the circumstances aforesaid the appeal deserved to be allowed with heavy cost to the Respondent.


6. The Respondent argued that the Appellant has been billed considering the fact that the construction activity was being carried out at the site when it was inspected. National holiday on account of Gandhi Jayanti is no bar for the Respondent to visit the premises. The Respondent has not dealt the case as per Section 126 of the Act as in the initial stages, itself, construction activity was going on and factory as such, was not manufacturing anything. Relying on completion certificate of the building which was given in the year 2013 would be improper to construe that no construction whatever would be necessary for the factory. In fact, the Appellant purchased the factory in June 2016 and connection was released on 08.03.2017. It is highly improbable that the new factory is established without any construction activity being done. The Appellant itself has agreed in its letter dated 01.10.2018 that some construction activity was going on at the premises. There is no reason for the visiting team to draw the conclusion that some construction activity was going on.

Analysis and Ruling

7. Heard both the parties on 24.01.2020. I perused the documents on record including the exhaustive submissions of both the parties. I noted that the building premises received completion certificate from MIDC Authority on 26.02.2013. The Appellant purchased a fully constructed factory from DHM in the month of June 2016 and the electric connection was taken in the name of DHM on 08.03.2017. The change of name for electric connection approved and effected immediately after submission of application on 25.05.2017. All approvals being in place, trial production started from 08.03.2017 after release of electric connection. Respondent inspected the premises on 02.10.2017 which was a National holiday and Appellant claimed that no construction activity was going on being National holiday as a matter of Law. However, the same Appellant in its letter dated 01.09. 2018 (shown to have been received on 01.10.2018 by the Respondent) has said that

“some construction works were in progress during the visit of SDO Karad.”

Moreover, the Appellant in its submission has said that


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“the Forum ignored the fact that Appellant though purchased fully constructed factory on 14.06.2016, did the required alterations / modifications changes/installation of machineries etc during the period 14.06.2016 to 28.02.2017 and since construction of factory was duly completed and as per Appellant for installation of machinery no major electricity is required”. So, it is an admitted position on the part of the Appellant that some construction activity was going on at the site and it is obvious also as the Appellant has purchased the factory from DHM having a completion certificate in 2013. Some minor works ought to be done in order to set up the entire outlay of machinery at its proper places depending upon the flow chart of the process and the space available. In its submission, the Appellant has gone ahead and said that no major electricity is required for construction activity or whatever being undertaken at the site. Quoting the exact date of start and finish of such construction activity by the Appellant somewhat looks odd and difficult to digest. Month wise consumption from March 2017 to December 2018 is given in Table below.

Table 6

Months (Year 2017)	Consumption (units)	Months (Year 2018)	Consumption (units)
-	-	January	34664
-	-	February	34949
March	918	March	63406
April	1270	April	60702
May	1478	May	68796
June	1495	June	64667
July	1910	July	65999
August	1754	August	49180
September	3713	September	62838
October	24101	October	31569
November	28985	November	61800
December	32874	December	80524

From the above table, it is seen that from March 2017 to September 2017, monthly consumption is in the range of 918 to 3713 units. However, from October 2017 onwards, it is in five digits ranging from 24101 to 80524 units. The Appellant has said that it has started its sample



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production immediately after release of connection. It has also given Batch No. of such sample production in the Table 4. There is no reason to deny its submission to this extent. After harmonious reading of the submission of the Appellant that some construction activity was going on and simultaneously, sample production was also going on, it is obvious that these two activities put together would not require much of power. This itself is an admitted position on the part of the Appellant. However, it is difficult to segregate the percentage of power consumption for construction and production in the total consumption from March 2017 to September 2017. It is very important to note that the connection has been released for the tariff category of Industry and the same was simultaneously used for construction activity. The Respondent has reasonably not invoked Section 126 of the Act. It has plainly applied Commercial tariff though however beyond September 2017 till the Appellant complained and applied for proper categorization of tariff, it continued. The Respondent should have applied its mind to the statistics of the consumption and should have taken call on proper tariff categorization of the Appellant. Had the Appellant not complained, this billing at commercial rate would have been continued in future. The Appellant paid the bills till such time without paying attention to what is being charged to it. Sudden jump in consumption after September 2017 cannot be attributed to the construction activity which was admittedly going on in the initial stages. Therefore, it will be gross injustice to bill the Appellant at Commercial tariff after September 2017.

8. In view of the above discussions, I pass the following order: -


- (a) The Respondent to bill the Appellant at appropriate tariff for its construction activity from March 2017 to September 2017
- (b) The Respondent to bill the Appellant at appropriate industrial tariff from October 2017 till actual application of this tariff to the Appellant.
- (c) The Respondent to revise the bill in view of (a) and (b) above.
- (d) DPC and interest collected, if any, shall be refunded.
- (e) Refund due to the Appellant shall be adjusted in the immediate ensuing bills.
- (f) Other prayers of the Appellant are rejected.
- (g) The Forum's order is modified to the extent above.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (h) Respondent to submit compliance within two months from the date of issue of this order.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

